

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1492/Mum/2023
(A.Y: 2015-16)

The ITO-41(3)(3), Room No.716, 7 th Floor, Kautilya Bhavan, BKC, Bandra(East), Mumbai-400051.	Vs	RamanlalAgarwal(HUF), A-401 Ganga Bldg, Rani Sati Marg, Malad (E), Mumbai-400097.
PAN/GIR No. : AAEHR1047Q		
Appellant	..	Respondent

Appellant by :	Shri.P.D.Chougule.Sr.DR
Respondent by :	ShriK.GopalandShri.OmKandalkar.AR

Date of Hearing	05.01.2024
Date of Pronouncement	22.02.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the revenue against the order of the National Faceless Appeal Centre (NFAC) Delhi / CIT(A) passed u/sec 143(3) and U/sec 250 of the Ac. The revenue has raised the following grounds of appeal:

1 .Whether on the facts and circumstances of the case the Ld.CIT(A) erred in holding that the identity of the lender is proved ignoring the finding of the AO that the lenders did not

reply to the notices issued u/s 133(6) and replies were obtained from them and submitted by the assessee"

2 "Whether, on the facts and circumstances of the case in law, the Ld.CIT(A) erred in holding creditworthiness of the lenders is proved without appreciating the findings of the AO in the assessment order that lenders have received funds from entities whose names have been struck off by MCA and hence the funds received by these lenders were non genuine thereby rendering the entire loan transactions bogus"

3. "Whether, on the facts and circumstances of the case in law, the Ld.CIT(A) erred in ignoring the decision in the case of Pavankumar M. Sanghvi vs ITO (2018) 97 taxman.com 398(SC)/(2018), wherein the Hon'ble Apex Court has confirmed the finding of Gujarat High Court that where assessee received loan from two companies, in view of fact that on date assessee was given loan there were credit entries of almost similar amounts and balance after these transactions was a small amount and moreover assessee failed to produce these lenders for verification, impugned amount was rightly brought to tax under section 68".

4. The appellant craves leave to add, amend, alter substitute or modify any of the above grounds or add a fresh ground as and when found necessary either before or at the time of hearing.

2. The brief facts of the case are that, the assessee is a Huf and is engaged in the business. The assessee has filed the return of income for the A.Y 2015-16 on 31.08.2015

disclosing a total income of Rs.2,48,290/-. Subsequently the case was selected for scrutiny for limited scrutiny under CASS for verification of (i) purchase of property reported in Form 26QB and (ii) Large investment in property (AIR) as compared to total income. The Assessing Officer (AO) has issued notice u/sec 143(2) and U/sec142(1) of the Act. in compliance to the notice the Ld. AR of the assessee filed the details from the time to time. Whereas the AO on perusal of the AIR information, found that in the F.Y 2014-15 the assessee has purchased two properties including registration charges of Rs. 7,55,85,000/-. And in lieu of notice issued u/sec 142(1) of the Act, the assessee has submitted the sources of funds for purchase of properties with unsecured loans obtained from two parties (i) Mrs. Barkha Agarwal of Rs. 64 lakhs and (ii) Lenient Consultant Pvt ltd of Rs.7,11,70,000/-. The assessee has submitted the audited financial statements and other evidences to substantiate the identity, creditworthiness and genuineness of the loan creditors referred at Para 11 of the assessment order, whereas the AO has dealt on the facts of the case, transactions of lenders and the financial statements of the lenders. Finally the AO was not satisfied with the evidences and information

and observed that the assessee has not satisfied the ingredients required u/s 68 of the Act in respect of the loan transactions and made addition of unsecured loan of Rs.7,75,70,000/- and assessed the total income of Rs. 7,78,18,290/- and passed the order u/sec 143(3) of the Act dated 29.12.2017.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The appellate authority has considered the grounds of appeal, statement of facts, findings of the AO, written submissions and the judicial decisions. The CIT(A) has observed that the assessee has discharged the burden by submitting the requisite information and the onus lies on the AO to make enquires and deleted the addition. The CIT(A) has considered the submissions of the assessee referred at Page 11 Para 5 to 6 of the order as under:

“5. SUBMISSION OF APPELLANT:

1. The Appellant has filed its return on income for Assessment Year 2015-16 on 31st August, 2015 declaring total income of Rs.2,48,290/- (page nos. 1 to 74 of Paper book). The case was selected for limited scrutiny.

2 During the year under appeal, the Appellant had purchased two residential premises for Rs.7,55,85,000/-. The funds for the acquisition were derived from two loans as under-

<i>Name of the lender</i>	<i>Address</i>	<i>Opening loan balance as at 01.04.2014</i>	<i>Loan taken during the year</i>	<i>Loan repaid during the year</i>	<i>Closing loan balance as at 31.03.2015</i>
<i>Mrs. Barkha Agarwal</i>	<i>1503- Quiescent Height, Mind space, Chincholi Bunder, Mumbai 400064</i>	<i>2560000</i>	<i>6400000</i>	<i>800000</i>	<i>8160000</i>
<i>Lenient Consultants Pvt Ltd</i>	<i>501, 5th Floor, Copia corporate Plot No. 9 Jasola, Delhi</i>	<i>Nil</i>	<i>71170000</i>	<i>Nil</i>	<i>711000</i>
	<i>Total</i>		<i>77570000</i>		

In the assessment order passed on 29th December 2017 passed u/s 143 (3) by the learned Assessing Officer, the Jeans taken during the year of Rs.7,75,70,000/- have been added by the learned Assessing Officer as unexplained cash credits u/s 68.

3. The Appellant has thus ultimately been assessed at income if Rs.7,78,18,290/- in this order. Aggrieved by the addition, the Appellant has preferred this appeal on the following grounds cited below.

4. Submission on ground no. 1 as follows:

4.1 Evidences produced by the Appellant in assessment proceedings.

In response to the queries sought in the course of assessment proceedings regarding genuineness of the loans, the Appellant has furnished the following evidences

(a) Re: Loan from Mrs. Barkha Agarwal (page nos. 8 to 23 of Paper Book). Rs.64,00,000/-

Copy of ledger confirmation.

Copy of income tax return filed by her for Assessment Year 2015- 16.

Copy of relevant pages of her bank statement.

Copy oilier Balance Sheet as at 31st March, 2015.

(b) Re: Loon from Lenient Consultants Pvt. Ltd Rs.7,11,70,000/- (page nos. 24 to 47 of Paper Book).

Copy of ledger confirmation.

Copy of income tax return filed by it for Assessment Year 2015- 16.

Copy of relevant pages of its bank statement.

Copy of its Audited Balance Sheet & Profit & Loss Account for FY 2014-15

According to the Appellant, by furnishing these evidences, it has fulfilled the conditions required to satisfy the learned Assessing Officer about the genuineness of the loans viz: - establishing the identity of the lenders, proving the nature of the transaction as a 'loan' and the creditworthiness of the lenders.

4.2 Findings of the learned Assessing Officer: -

However, the learned Assessing Officer has, however, chosen to treat the two loans as unexplained cash credits and added the same to the income of the Appellant u/s 68. In doing so, he has relied on the following inferences drawn by him.

4.2.1, Re; The identity of the lender, Lenient consultants Ltd. (Page 3 to 5, para nos. 6.1. of the assessment order)

According to learned Assessing Officer, Lenient Consultants Pvt. Ltd is non-existent at the address given at 501, 5th Floor, Copia Corporate Snits, Plot no. 9 District Centre- Jassola, New Delhi, South Delhi 110025, in saying so. he has posted in the assessment order a snap shot of the signboards in that building. which show 301. Floor as office of Samtel Corporate Office'

4.2.2. Re Genuineness or the Company, Lenient Consultant Pvt. Ltd. (page nos. 5 to 6 Para nos 6.1 to 7.1 of the assessment order).

According to the learned Assessing Officer, he issued a notice u/s 133(6) dated 17th October, 2017 to Lenient Consultants Pvt. Ltd and no reply was received. A reminder letter was issued on 18th December, 2017. Seeking the same details, the reminder letter is stated to have been delivered on 21st December, 2017 at 14.45 pm as per speed post tracking status on website of India Post.

A reply dated 22nd December, 2017 from Lenient Consultants Pvt. Ltd was submitted in the learned Assessing Officer's office on 22nd December, 2017. This reply cites that the company had been informed by Ramanlal Agarwal HUF that a notice u/s 133 (6) was issued to us and not replied. Hence, details of the loan transaction are being given with reply letter in form of copy of ledger account of Ramanlal Agarwal (HUF), copy of

audited financial statements of the company for year ended 31st March, 2015, copy of income tax return acknowledgment for A.Y. 2015-16 and copy of relevant pages of the company's bank statement highlighting the entries of loan transactions.

The learned Assessing Officer, in his assessment order, has firstly faulted this reply on ground that it is being submitted at instance of Ramanlal Agarwal (HUF) and not in response to his reminder notice issued on 21st December, 2017. According to him, since the company has not received the reminder notice, the company's address is fake. More ever, the company has submitted the same details as earlier submitted by the Appellant According to him, the reply letter is fake one submitted by the Appellant and not by Lenient Consultants Pvt. Ltd.

4.2.3, Re: Creditworthiness of Lenient Consultants Pvt. Ltd (Page no's, 8 to 28, Para no. 8.1. to 21).

Lenient Consultants Pvt. Ltd has filed two different returns of income for Assessment Year 2014-15 on 30th September, 2014 and 23rd February, 2015 with different addresses, names of directors, paid up capital and share premium figures and total incomes. This means that the company is a bogus concern and the share premium received is also bogus.

The company has written off bad debts, diminution in value of its investments, loss on sale of investments for A.Y. 2015-16. Despite these losses, the company has given an interest free loan of Rs.7.11/- crores to the Appellant.

The company has received Rs.86crores share premium in AY, 2014-15 from companies who have no net worth.

The company has credit entries in its bank accounts from two companies, management Consultancy Pvt. Ltd filing history with ROC, tend Brainpool Systems Pvt. Ltd.,

4.2.4. Loan from Barkha Agarwal Rs.64,00,000/- (Page no. 27, para no. 14.7 of the assessment order).

The findings of the learned Assessing Officer are as under:

In funding the Appellant with loans of Rs. 64,00,000/-, Barkha Agarwal has availed loans of Rs90,00,000/- from CEA Consultants Pvt. Ltd, which is shareholder of Lenient Consultants Pvt. Ltd. On perusal of bank account of CEA Consultants Pvt. Ltd. it is seen that it has credits from Brainpool Systems Pvt. Ltd and Chalukya Management Consultancy Pvt. Ltd. Therefore, the loans received are bogus for same reasons as above.

Based on the above findings, the learned Assessing Officer has held that the loans given by Lenient Consultants Pvt. Ltd and Barkha Agarwal are not genuine. He has thus treated the amounts received by the loans as unexplained cash credits u/s 68 and made an addition of Rs.7,75,70,000/- to the income of the Appellant.

4.3. The Appellant's submissions in appeal

The Appellant is giving hereunder a point to point rejoinder to the learned Assessing Officer's findings.

The Appellant is here first reciting the findings of the learned Assessing Officer (even at cost of repetition) for easier reference and then, following it up with its rejoinder.

Re: Identity of the lender Learned Assessing Officer's disbelief of the address given by Lenient Consultants Pvt. Ltd. (Page nos. 3 to 5, para no's, 6.1. of the assessment order).

According to learned Assessing Officer, Lenient Consultants Pvt. Ltd is not existent at the address given at 501, 5th Floor, Copia Corporate Suits, Plot no. 9, District Centre- Jassola, New Delhi, South Delhi 110025. In saying he has posted a snap shot of the signboards in that building, which show 501, 5th Floor as office of 'Samtel Corporate Office'.

Here, the learned Assessing Officer failed to note that Lenient Consultants Pvt. Ltd is a related party of Samtel and therefore, its address was given at Corporate Office address of Samtel. The fact that Samtel is a related party is borne from the audited balance sheet of Lenient Consultants Pvt. Ltd filed with the learned Assessing Officer, In Schedule 4 of the Balance Sheet as at 31st March, 2015, under the head "Long Term Borrowings", sub-head "Loan from related parties (Unsecured) Samtel Glass Limited and 'Rangel India Limited are shown as lenders, (page nos. 30 to 40 of Paper Book).

This explains the office address of the Appellant at its related party's site Therefore, the findings of the learned Assessing Officer are clearly misconceived.

4.3.2. Re Genuineness of the Company, Lenient Consultants Pvt. Ltd. (page nos. 5 to 8 Para. nos. 6.1 to 7.1 of the assessment order).

According to the learned Assessing Officers it issued a notice u/s 133(5) dated 17th October, 2017 to Lenient Consultants PvtLtd and no reply was received. A reminder letter was issued on 18th December, 2017, seeking the same details. The reminder letter is stated to have been delivered on 21st

December, 2017 at 14.45 pm as per speed post tracking status on website of India Post.

A reply dated 22nd December, 2017 from Lenient Consultants Pvt. Ltd. was submitted in the learned Assessing Officer's office on 22 nd December, 2017. This reply cites that the company had been informed by Ramanlal Agarwal HUF that a notice u/s 133 (6) was issued to us and not replied. Hence, details of the loan transaction are being given with reply letter in form of copy of ledger account of Ramanlal Agarwal (HUF), copy of audited financial statements of the company for year ended 31st March, 2015, copy of income tax return acknowledgment for AY 2015-16 and copy of relevant pages of the company's bank statement highlighting the entries of loan transactions.

The learned Assessing Officer, in his assessment order, has faulted this reply on ground that it is being submitted at instance of Ramanlal Agarwal (HUF) and not in response to his reminder notice issued on 21st December, 2017. According to him, since the company has not received the reminder notice, the company's address is fake. More ever, the company has submitted the same details as earlier submitted by the Appellant, according to him, the reply letter is fake one submitted by the Appellant and not by Lenient Consultants Pvt. Ltd.

The learned Assessing Officer here has overlooked his own findings. A notice u/s 133 (6) was issued on Lenient Consultants Pvt. Ltd on 17th October, 2016. This reply is stated to be not replied. The learned Assessing Officer admits that to this. The learned Assessing Officer cites that a reminder was subsequently issued on 18th December 2017 on Lenient Consultants Pvt. Ltd. which was served on 21st December, 2017.

Thereafter, a reply was submitted by Lenient Consultants PvtLtd on 22nd December, 2017. The reply clearly states that same is submitted on information received from Appellant that a notice u/s 133 (6) was not replied. How does the Appellant know that a notice u/s 133 (6) was issued by the learned Assessing Officer either on 17th October 2016 or subsequently? It can only be because the learned Assessing Officer pointed it out to the Appellant in assessment proceedings it is not? it is thus logical that the Appellant informed Lenient Consultants Pvt. Ltd to submit evidences about the loan and the reply was submitted in this manner to the learned Assessing Officer.

Reminder dated 18th December, 2017 was not served at all. It was served at the prior address of company at New Friends Colony at New Delhi. This is admitted by the learned Assessing Officer in his assessment order.

To come to the conclusion that the company is not existent at all would be respectfully invalid when the company is active on income tax assessment records, it is also not the case the company's has not struck off by Registrar of Companies. The company is obviously admitting itself to regulatory authorities.

To infer the company as non-genuine would therefore be misdirected.

4.3.3. Re: Creditworthiness of Lenient Consultants Pvt. Ltd (Page nos. 8 to 28, Para no. 8.1. to 21).

Lenient Consultants PvtLtd has filed two different returns of income for Assessment Year 2014-15 on 30th September, 2014 and 23rd February, 2015 with different addresses, names of directors paid up capital and share premium figures and total

incomes. This means that the company is a bogus concern and the share premium received is also bogus.

The company has written of bad debts, diminution in value of its investments, loss on sale of investments for A.Y. 2015-16. Despite these losses the company has given an interest free loans of Rs.7.11/- crores to the Appellant.

The company has received Rs.86/- crores share premium in A.Y.2014-15 from companies who have no net worth.

The company has credit entries in its bank accounts from two companies, Chalukya Management Consultancy Pvt. Ltd and Brainpool Systems Pvt Ltd, who has no filing history with ROC

a) Section 68- Adequate fulfillment of primary onus by Appellant

At the outset, the Appellant may point out the law settled by the Courts is clear to the effect that when an amount is found credited in the books of accounts of the assessee, there is primary onus on him to establish the identity of the creditor, the genuineness of the transaction and the creditworthiness of the creditors. The onus is expected to be discharged by the assessee in a reasonable manner by leading prima fade evidence.

Where the assessee has given the name and address of the creditors and submits confirmations from the creditors, who are tax assesseees, about the credit transactions, he is implied to have discharged this primary onus. The onus then shifts to the Income Tax Department to prove the contrary.

In the instant case of the Appellant, it has admittedly submitted the following evidences:-

*Re: Loan from Lenient Consultants Pvt. Ltd Rs.7,11,70,000/-
(page nos. 24 to 47 of Paper Book).*

Copy of ledger confirmation.

Copy of income tax return filed by it for Assessment Year 2015-16.

Copy of relevant pages of its bank statement.

*Copy of its Audited Balance Sheet & Profit & Loss Account for
FY 2014-15*

*Re: Loan from Mrs. Barkha Agarwal nos. 8 to 23 of Paper
Book). Rs.64,00,000/- (page*

Copy of ledger confirmation.

*Copy of income tax return filed by her for Assessment Year
2015- 16.*

Copy of relevant pages of her bank statement

Copy oilier Balance Sheet as at 31st March, 2015.

*In these circumstances, the Appellant submits that it has more
than sufficiently discharged as onus of proving the loan
transaction.*

*The Appellant's lenders have been shown to be income tax
assesses and therefore, their identities are clearly established.*

*The lenders have thus confirmed their transactions with the
Appellant as loan transactions. In this manner, the nature of*

the transaction stands proved. The lenders have submitted copies of their balance sheets as filed with their income tax returns. The balance sheets show that they have lent their funds to the Appellant and the sources for funds are also disclosed, once the lender is shown to be possession of funds - whether own or borrowed to give the loans. The Appellant must be understood to have fulfilled the onus of proving the creditworthiness of the lender. To prove credit worthiness in a prima facie manner, all that is required to be shown that the creditors men of means (i.e.. possessing funds on hand) to give the loan to the Appellant and nothing more.

The onus of the Appellant ends here. He is not required to prove Further the source of the source of the fund of the lenders. That is the legal position well settled regarding section 68.

Even the amendment to section 68 in form of the proviso inserted by Finance Act. 2011 w.e.f. 1st April, 2013 has not altered this position. A useful authority in this regard can be found in the decision of the Delhi Tribunal in the case of ACIT vs. Smt. Prem Anand in (ITA no, 35 14/Del/2014 dated 13th April, 2017 F"- Bench. Here, the Hon'ble Tribunal held as under: -

Here we find that the Ld. Cit (A) has rightly observed that the (Assessee is not required to explain the source of source of the fund gets buttressed by the amendment made in section 68 with effect from 1st April, 2013 which empowers the Assessing Officer to examine the source of source in case of share application money from 1st April, 2013 and no other cases prior to that the amendment further does not give power to Assessing Officer to examine source of source of non share capital cases and that too prior 1st April, 2013"

That the amendment by proviso to section 68 is meant for share capital transactions also been explained by, the CBDT explaining Finance Act, 2012.

According to the Appellant, by submitting, balance sheets filed by the lenders along with their income returns, it has more than sufficiently discharged its primary or establishing the fact that the Lenders had means on their hands to lend moneys to the Appellant. It is not for the Appellant to explain the source of source of the mulls.

With the above legal position in the background, the Appellant will answer to each finding of the learned Assessing Officer below

Creditworthiness of Lenient Consultants Pert, Ltd.-the learned Assessing Officer:- Lenient Consultants Pvt. Ltd filed two different returns for Assessment Year 2014-15 on 30th September, 2014 and 23rd February, 2015 with different addresses, names of directors, paid up capital and share premium figures and total incomes. This means that the company is a bogus concern and the share premium received is also bogus.

Rejoinder of Appellant to the First bench on credit worthiness: The Appellant is unable to understand how two returns can be made with the same PAN with two different addresses one of Delhi & one of Kolkata, in any case, the Appellant was never confronted with the copies of these returns at the time of the assessment proceedings. The Appellant has sought copies of these returns from the learned Assessing Officer after receiving the assessment order. (Letter enclosed - Page no's, 65to 66 of Paper Book)The copies have not been provided, in these circumstances, it is urged that no adverse inferences should be drawn against the Appellant in the appeal

(c) Creditworthiness of Lenient Consultants Pvt ltd - Second Finding of the learned Assess in Officer The company has written off bad debts, diminution in value of its investments, loss on sale of investments for A.Y 2015-16. Despite these losses, the company has given interest free loans of Rs.7.11/- crores to the Appellant.

The company has received Rs. 86crores share premium in A.Y. 2014-15 from companies who have no net worth.

The company has credit entries in its bank accounts from two companies, Chalukya Management Consultancy Pvt. Ltd and Brainpool Systems Pvt. Ltd, who has no filing history with ROC.

From the findings of the learned Assessing Officer, it is clear Lenient Consultants Pvt. Ltd has raised Rs. 86.00crores as share premium in the prior year i.e.. year ended 31st March, 2014. This Rs.86.00 crores, according to the learned Assessing Officer, has been raised from shareholder companies who have no net worth, This means that as at 31st March, 2014, the company had Rs. 86.00 crores of funds at its disposal. The Appellant has nothing to do with how the company has raised his funds in the prior year.

In any case, there can be admittedly no nexus between the funds of Rs.86.00crores raised in the prior year (i.e., year ended 31st March, 2014) and the loan of Rs.7,11,70,000/- given in the year ended 31st March2015. The learned Assessing Officer cannot, in any case, support an addition for unexplained cash credits u/s 68 for Assessment Year 2015-16 on basis of source of fund which admittedly relating to Assessment Year 2014-15. There will be mismatch of Assessment Years.

The Appellant cannot be made to explain how the shareholder companies of Lenient Consultants sourced their funds for paying share premium. That will tantamount to the Appellant being asked to explain the source of source, which action the law forbids.

Even otherwise, a perusal of the Balance Sheet submitted by Lenient Consultants Pvt. Ltd will show that Rs.86.00crores collected by way of share premium in the year ended 31st March, 2014 has been invested in 'Non-Current Investments' (Schedule 9 of the balance sheet unquoted shares) of Rs.92.85crores held by it as at 31st March, 2014. A comparison of the balance sheet figures as at 31st March, 2014 and 31st March, 2015, show that the company has changed its mode of investments from Non-Current Investments to Long Term Loans and Advances of Rs. 70,09,83,881/- as at 31st March, 2015. A logical conclusion would be that the company has unloaded its investments in unquoted shares and parked the proceeds in Loans and Advances during the year ended 31st March, 2015.

One cannot discount a guess work possibility that entries in the bank account of Lenient Consultants Pvt. Ltd relating to Chalukya Management Consultancy Pvt. Ltd and Brainpool Systems Pvt. Ltd may consequent to this disinvestment exercise? But then it is something which the Appellant should not be made to explain.

There is no evidence that the Appellant has paid cash to either Lenient Consultants PvtLtd or Chalukya Management Consultancy Pvt Ltd or Brainpool Systems Pvt. Ltd. in these circumstances, it would improper to infer that the loans taken by the Appellant is an unexplained cash credit.

Lastly, the observation of the Learned Assessing Officer that the loan given by Lenient was interest free is incorrect. The question of whether loans were interest bearing or interest free assessment. The observation of the learned Assessing Officer that the loan was interest free was his own self derived conclusion and not on basis of any inquiry or evidence, The fact is that the Appellant has paid the interest in subsequent years and as on date, the loan is fully paid back with interest. To put things beyond, the Appellant is filing the Copies of the confirmations from Lenient Consultants Pvt. Ltd for the post assessment periods to substantiate the Appellant's contention. (Page nos. 67 to 74 of Paper Book).

Based on the above submissions, the Appellant says that it has adequately proved the genuineness of the loan transaction of Rs.7,11,70,000/- with Lenient Consultants Pvt. Ltd. The addition may please be deleted in appeal.

4.3.4. Re: Loan from Barkha Agarwal Rs.64,00,000/- (Page no.27, para no. 14.7 of the assessment order).

The findings of the learned Assessing Officer are as under- In funding the Appellant with loans of Rs. 64,00,000/-, Barkha Agarwal has availed loans of Rs. 90,00,000/- from CEA Consultants

Pvt. Ltd, which is shareholder of Lenient Consultants Pvt. Ltd. On perusal of bank account of CEA Consultants Pvt. Ltd, it is seen that it has credits from Brainpool Systems Pvt. Ltd and Chalukya Management Consultancy Pvt Ltd. Therefore, the loans received are bogus for same reasons as above.

The Appellant's rejoinder to the above findings.

In the course of the assessment proceedings, the Appellant has furnished the following evidences (page nos. 8 to 23 of Paper Book).

Copy of ledger confirmation.

Copy of income tax return filed by her for Assessment Year 2015- 16.

Copy of relevant pages of her bank statement.

Copy of her Balance Sheet as at 31st March, 2015.

In this process, it has also adequately proved the genuineness of its loan transaction of Rs.64,00,000/- with Barkha Agarwal. By furnishing her income tax return the Appellant has established the identity of the lender. Barkha Agarwal has confirmed the transaction as a loan. Thereby, the nature of the transaction as a loan stand proved. By furnishing a copy of her balance sheet, her means to provide the loan is established, the source of loan is the back-to-back funding from CEA Consultants Pvt. Ltd.

Regarding credit entries relating to Brainpool Systems Pvt. Ltd and Chalukya Management Consultancy Pvt. Ltd. in bank statement or CEA Consultants Pvt. Ltd, it would be remote to expect the Appellant to explain the source of source.

From its side, the Appellant has more than adequately discharged the primary onus of proving the loan from Barkha Agarwal In these circumstances, the learned Assessing Officer clearly erred in treating the loan from Barkha Agarwal for Rs.64,00,000/- as unexplained cash credit.

Ground No 2-initiating penalty is not pressed.

Ground No 3 challenge the levy of interest u/s 234-C which ground may be considered as consequential to ground 1

The appellant seeks a fair opportunity of being heard in appeal.

6. PROCEEDINGS

The appellant was provided opportunity of being heard by way of issue of hearing notice dated 25th December 2020, 12th December, 2022 and 14th February 2023 The appellant has submitted his response on 13th January 2021, 29th December, 2022 and 20th February, 2023. Grounds of Appeal and Statement of Facts, including submissions made by the Appellant in response to hearing notices and the order of the Learned Assessing Officer have been carefully considered. Grounds of Appeal of the Appellant as reproduced above are adjudicated as under.

4. Further the CIT(A) has dealt on the facts, credible evidences and submissions, judicial decisions and granted the relief observing at Para 7 to 7.12 of the order as under:

“7. FINDINGS AND DECISION:

Ground 1

7.1 I have gone through the order of Assessing Officer and submission made by the appellant. The appellant has purchased two residential premises out of two loan funds to the extent Rs.7,75,70,000/-The learned Assessing Officer has treated loan borrowed by the appellant from Mrs Barkha Agarwal & Lenient Consultant Pvt Ltd as bogus and added them back to total income by invoking section 68.

7.2 The learned Assessing Officer has termed it as a coloring mechanism to bring back unaccounted funds back into business using entities that are non-existent. He also pointed out that Lenient consultants (one of lenders) is non-existent on the addresses mentioned on its letterhead and have also filed two return of income with conflicting data in AY 2014-15. Further, Lenient Consultant did not have significant level of operations for lending money. It had received share premium which was on ward lent to the appellant.

In respect of other lender Ms. Barkha Agrarwal, the learned Assessing Officer pointed out that she had availed loans from CEA consultants Pvt Ltd which is also a shareholder of Lenient consultants and on lend it to the appellant.

7.3 Provision of section 68 is reproduced here under

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer satisfactory the sum so credited may be charged to Income-Tax as the income of the assessee of that previous year..."

In order to invoke section 68, the most essential aspect is that the tax payer does not offer any explanation towards source and nature of such cash credit The tax payer also needs to establish the identity and credit worthiness of the lender

7.4 During the course of assessment proceedings the appellant filed supporting documents to the transactions comprising of bank statements reflecting receipt of money, confirmation from

both the lenders, financial statements of both the lenders and explanation towards source of funds of lenders.

7.5 The learned Assessing Officer contested that Lenient consultant does not exist just because he didn't find his name mentioned on building premises. The said contention cannot be accepted because the lender has itself issued a confirmation, it is a private limited company having valid record with the MCA, it has also submitted the audit report. Therefore, it is reasonable to conclude lender lenient consultants do exist.

7.6 The appellant demonstrated the source of funds of both the lenders by way of producing their financial statements. On perusal of financial statements, it has been observed that Lenient consultants has sufficient funds in form of share premium money and therefore the creditworthiness of the lender is also established.

7.7 In view of the above, I am of the considerate view that once the identity of the lender, its creditworthiness is established, the said transaction cannot be re-characterized as unexplained cash credit. The appellant has very well discharged his onus to explain/demonstrate the nature of transaction i.e., loan. Therefore, the addition of Rs.7,75,70,000/- made by learned Assessing Officer is deleted.

7.8 Accordingly Ground 1 of appellant is allowed.

Ground 2

7.9 Ground 2 pertains to initiation of penalty by the learned Assessing Officer. Since, in the underlined case the penalty is not levied, the same cannot be subject matter of adjudication and therefore this ground of appeal is infructuous.

7.10 Accordingly, Ground 2 of appeal is dismissed

Ground 3

7.11 Ground 3 pertains to levy of interest u/s 234C. The appellant contested that the learned Assessing Officer levied interest u/s 234C. In this regard, it is pertinent to mention that levy of interest on any demand amount is consequential in nature and therefore thereby deleted.

7.12 Accordingly, the ground 3 of appellant is allowed”

5. Aggrieved by the CIT(A) order, the revenue has filed the appeal with the Hon'ble Tribunal.

6. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the addition though the assessee has not proved the ingredients of the Sec. 68 of the Act i.e identity, genuineness and creditworthiness of the lender and further unsecured loan transactions are in the nature of accommodation entries and the Ld.DR relied on the AO order and prayed for allowing the revenue appeal. Per Contra, the Ld.AR supported the order of the CIT(A) and substantiated the submissions with the factual paper book and judicial decisions.

7. We heard the rival submissions and perused the material on record. The sole grievance of the revenue that, the CIT(A) has erred in deleting the addition of unsecured loans from the two loan creditors. The Ld.AR submitted that the

assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and Audited financial statements and unilaterally made addition u/sec68 of the Act. The Ld.AR emphasized that the assessee has discharged its burden by submitting the financial statements of the lenders where the payment is made through banking channel and identity, creditworthiness and genuineness of the lenders were proved in the assessment proceedings. The assessee has submitted the Audited financial statements, confirmations, Bank statements, copy of the income tax returns. Whereas the A.O has disbelieved the fact of identity, creditworthiness and genuineness of the transaction. Further to substantiate the identity of lenders, the assessee has filed the income tax PAN and return of income on the genuineness of the transaction, the assessee has submitted the bank statements and also credit worthiness is substantiated with the Audited financial statements. The information submitted by the assessee satisfied the three ingredients of provisions of Sec. 68 of the Act. Further the Ld.AR submitted that the assessee has substantiated the stand by submitting the details before the A.O. and

appellate authorities and the assessee has discharged the burden and relied on the judicial decisions. The Ld.AR demonstrated the copy of bank statements reflecting the transactions of loans, interest payment and repayment at page 153 to 157 of the paper book which is not disputed by the revenue. Further the Ld. AR has referred to the page 158 to 203 of the Paper Book highlighting on the income tax particulars, Audited financial statements, confirmation of loan transactions and bank account statements of both the lenders.

8. The Ld.AR emphasized that the loans are repaid in the subsequent financial years. The Ld.AR relied on the submissions filed before the CIT(A) placed at Page 204 to 214 of the paper book. Further the Ld.AR submitted that the assessee is not required to prove the source of the source i.e lenders, as the first proviso to section 68 of the Act is not applicable, as the assessee is a HUF and not a company. Whereas the A.O. has not conducted any investigation or enquiry in respect of the information submitted by the assessee. The CIT(A) has considered the facts, circumstances and observed that the assessee prima-facie has complied the ingredients required u/s 68 of the Act of identity, genuineness and creditworthiness. The

CIT(A) came to a reasonable conclusion that the assessee has discharged its burden on submitting the information in the assessment proceedings and the A.O should have conducted further enquiries and independent investigation. We find the CIT(A) has dealt on the facts, provisions of law, submissions and judicial decisions and has passed a conclusive and reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) on the disputed issues and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22.02.2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.02.2024

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT

5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai